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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. _____.

BRAHMA S. KAUSHIVA,

Petitioner,

-vs-

ALLEN M. HUTTER,

Respondent

PETITION FOR A WRIT OF CERTIORARI
To the District of Columbia Court of Appeals

Brahma S. Kaushiva,
pro se
4623 Lincoln Avenue
Beltsville, Maryland
20705

QUESTION PRESENTED

Whether a party's constitutional rights are denied where an attorney retained under a contingent fee agreement is awarded the full contingent fee despite termination of his services prior to the substantial performance of his contract, and the trial Court's actions at trial result in prejudicial improprieties against the Petitioner under allegations of fraud and misrepresentation.

PARTIES TO THE PROCEEDINGS

The parties to this proceedings are Dr. Brahma S. Kaushiva, petitioner and Allen M. Hutter, Esquire, the respondent.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

No.

BRAHMA S. KAUSHIVA,

Petitioner,

vs.

ALLEN M. HUTTER,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA
COURT OF APPEALS

The Petitioner, Dr. Brahma S. Kaushiva, pro se, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the District of Columbia Court of Appeals entered in this proceeding on January 12, 1983 and denial of petition for hearing and hearing en banc dated February 10, 1983.

OPINIONS BELOW.

The opinion of the Court of Appeals appears in the Appendix hereto. The Order and Judgment of trial court appears as Appendix "C".

JURISDICTION.

The judgment of the Court of Appeals, District of Columbia was entered on January 12, 1983 and this petition for certiorari was filed within 90 days of the denial of petition for rehearing and rehearing en banc dated February 10, 1983. This Court's jurisdiction is invoked under 28 U.S. Code 1257.

STATUTORY PROVISIONS INVOLVED

Constitution of the United States

Sixth Amendment

Fourteenth Amendment

28 U.S. Code 1257

STATEMENT OF THE CASE

Attorney Allen M. Hutter secured a judgment in his favor in the amount of $22,422.48 on November 23, 1981 in the Superior Court of the District of Columbia based on petitioner Dr. Brahma S. Kaushiva's breach of a contingent fee contract. This judgment was affirmed by the District of Columbia Court of Appeals on January 12, 1983.

On or about September 20, 1979, Dr. Brahma S. Kaushiva was forced to sign a tripartite contingent fee agreement with Attorney Hutter and Attorney Joseph T. Lilly in connection with petitioner's representation in the various court actions and administrative proceedings challenging his discharge from the Washington Technical Institute, now the University of the District of Columbia.

The three-party agreement required Attorney Hutter to represent Dr. Kaushiva

> "in connection with Arbitration Proceedings, Superior Court of the District of Columbia suits, U.S.District Court for the District of Columbia suit, U.S. Court of Appeals suit, and any other necessary action relative to Dr. Kaushiva matter."
> (Emphasis added) Appendix "D"

This contingent fee agreement allowed Attorney Hutter 15% of any amount of damages"recovered" in connection with the case and would cover his fee for all matters listed in the September 20, 1979 contract. Appendix "D".

Attorney Hutter abandoned the case on November 9, 1979 after only three day's representation in Arbitration hearings and withdrew voluntarily immediately thereafter. Appendix "E".

Attorney Hutter ceased representing Dr. Kaushiva prior to the completion of agreed work, particularly

1. prior to completion of Arbitration, more specifically correction of transcripts due on November 9 and November 16, 1979 and filing of Arbitration Brief on December 14, 1979.

2. prior to completion of representation of petitioner in the Superior Court of the District of Columbia;

3. U.S. District Court;

4. U.S. Court of Appeals; and

5. other matters which arose at the

University of the District of Columbia

as agreed upon in the fee agreement. Appendix "D".

The record shows that Attorney Hutter was not involved with any of these matter at any stage as required under the contingent agreement.

The general docket entries in these suits, U.S.Court of Appeals for the District of Columbia Circuit 78-1912, Appendix "F", U.S.District Court for the District of Columbia Circuit 77-2176, and Superior Court of the District of Columbia 5792-77, Appendix "G" and "H" respectively, are bereft of any representation by Attorney Hutter although these actions remained active and basically still on-going.

The criteria of "substantial performance" have not been met. The lower court's judgment is plainly wrong and without evidence to support it.

Attorney Hutter simply did not perfo-

rm under the contract and made the perjurious statement that he was fired. In fact, Attorney Hutter ceased representing his client in the middle of arbitration and his client had to take recourse to judicare and other legal assistance. The arbitration brief was filed by Attorney Palau, Appendix I, and all the correspondence regarding Arbitration Award was directed to Attorney Palau by the Arbitration Board, Appendix "J" and "K". All the work regarding the correction of transcripts was handled by the petitioner. See Appendix "L" and "M".

Attorney Hutter admits that he had no involvement in the exchange of documents including witness lists and preliminary issues to be discussed, pre-arbitration meeting, and selection process of arbitrators and submission agreement which were duly completed prior to signing of September 20, 1979 agreement.

Misrepresentation, mismanagement and several judicial improprieties impeded the

legal process and made the contingent fee agreement a focus for legal fraud.

The State Courts failed to afford due process under law and did not heed the irregularities and prejudicial errors of facts and law. The State could not make an impartial judgment because the incompleteness of the record which was missing, displaced and deliberately tampered with by a conspiracy of attorneys who are the officials of the court and arm of the State. See Appendix "N" Jacket entry of August 12, 1980; Appendix "O" January 22, 1981 misrepresentation by Steffen Graae regarding prior involvement of the trial Judge Stewart; Appendix "P" November 23, 1981 Judge Stewart casting doubt himself regarding his ability to sit and try the case; Appendix "Q" letter of February 23, 1981 pointing out the various irregularities; Appendix "R" letter of July 1, 1982 seeking explanation for various irregularities; and Appendix "S" showing faulty and irregular process followed for taxing

costs contrary to court rules and procedures on ex parte basis. The minutes furnish in detail the extent of miscarriage of justice, Appendix "T". The pleas to make investigation were directed to the Clerk of the Superior Court of the District of Columbia, Appendix "U" and the Clerk of the District of Columbia Court of Appeals, Appendix "V" without any response.

The judgment of $22,422.48 is in error, being 15% of $149,483.17 which includes $144,411.86 backpay and $17,659.50 for retirement benefits and the court has obviously erred in considering the amount "recovered" with the amount "recoverable", Pacific Atlantic S.S. Co. v. United States 120 F Supp. 753 (1954), as synonymous.

During the trial an oral motion for a directed verdict was denied by the judge who had prior involvement in the case.

As admitted by Attorney Hutter in his Answer to Second Set of Interrogatories (Record 334), he had no involvement with the arbi-

tration except his appearance for three day's hearings and for which all the preparation was made proir to his taking the case and signing the contingent fee agreement of September 20, 1979. All the documentation was prepared by other attorneys:

Interrogatory #12: State whether plaintiff filed any written briefs, discovery documents, pleadings or any other written submissions on defendant's behalf during the time that plaintiff represented defendant.

Answer: NONE.

Interrogatory # 12a: Identify any such materials submitted on defendant's behalf.

Answer: NONE.

Interrogatory #12b: If no such materials were submitted in defendant's behalf state the reason why no such materials were submitted.

Answer: All documentation was prepared by prior attorney whom defendant discharged in August 1979.

Attorney Lilly withdrew from the case effective August 11, 1979 by a court order due to allegations of collusive improprieties. Appendix "W". Attorney Hutter also did not cooperate in the discovery process and impeded timely answering interrogatories and produc-

tion of documents. See Court Orders of May 20, 1981 and June 16, 1981, Appendix "X" & "Xa" respectively.

Simulstaneously with the filing of the suit, Attorney Hutter was granted a pre-judgment writ of attachment on August 1, 1980 based on false pretense as harassment tactic.

Despite the fact that there is no statutory bond, the writ is still in force and the garnishee University is not paying the amount due and owed to the petitioner under the arbitration award and confirmed court order of July 18, 1980 because of the said writ. See Appendix "Y".

The petitioner moved on December 3, 1981 for a New Trial and Stay of Execution. Both the motions were denied by the trial court on December 21, 1981.

The petitioner moved on December 31, 1981 to Vacate Court Orders of November 23, 1981, December 21, 1981 - New Trial; and December 21, 1981 - Stay of Execution under SCR 60(b) in order to provide relief from

the judgment. These motions remain without judicial determination to this day at the State Courts.

Attorney Hutter's putative claim is spurious, excessive and unconscienable. Clearly, it is illegal and based on fraud without meeting the criteria of substantial performance even remotely.

As stated earlier the judgment has been obtained by fraud, duress and tortious means and the question of substantial performance is highly disputed.

Finally, the correctness of the decision below is open to serious question.

REASONS FOR GRANTING THE WRIT

I

The Decisions of the Courts below have misconstrued and misapplied facts and law, resulting in a constitutional deprivaof due process under the 6th and 14th Amendments.

Attorney Hutter has acted in his own

interest in fraud of his client and contrived to conceal the fraud and wrong done to the petitioner. Melms v. Pabst Brewing Co., 93 Wis 153, 66 NW 518.

When an attorney undertakes to conduct an action he impliedly stipulates that he will prosecute it to a conclusion and he is not at liberty to abandon the suits and arbitration without reasonable cause. Stark County v. Mischel, 42 ND 332, 173 NW 817, 6ALR 174.

The petitioner was denied his right to a full and fair trial which was impeded due to collusion of attorneys. The State Court could not make an impartial adjudication of the validity of the contingent fee agreement and counterclaims due to the incomplete, missing, displaced and deliberately or accidentally removed record at the time of trial.

Due to misrepresentations, fraud, and judicial improprieties, the contingent fee agreement which was signed under duress and

undue influence became the focus for legal fraud. See McCray v. Maryland, 456 F. 2d 1 (4th Cir. 1972) where it was held that a clerk's error in performing his ministrial duties gave rise to a federal cause of action. Procedural shortcomings resulting in an unfair trial on civil issues in state courts may also give rise to a deprivation of federally protected rights. See Bottone v. Lindsley, 170 F. 2d 705, cert. den. 336 U.S. 944 (1948).

The claim of Attorney Hutter is erroneous and is based on an invalid contingent fee agreement. Additionally, Attorney Hutter completed less than 1/8th of the contracted work and all the work has been done by other attorneys and through pro se representation.

By sheer dint of labor of other attorneys and pro se representations, Judge Goodrich entered an order on July 18, 1980 that, among other things, confirmed the arbitration award that was favorable to Dr. Kaushiva. See Appendix "Z". In the same

order Judge Goodrich also denied the joint motion of Attorneys Hutter and Lilly to intervene after a full hearing. There was a judicial finding that:

> ". . . it was only after the award was made that they saw it fit to intervene." Judge Goodrich. Record 1, Tr. p. 6

which effectively terminated Attorney Hutter's and Lilly's equitable lien based on the contingent fee agreement.

The illegal conduct of Attorney Hutter also violates Ethical Consideration, 5-7 of the Code of Professional Responsibility of the American Bar Association which provides:

> ". . . a lawyer should enter into a contingent fee agreement only in those instances where the arrangement will be beneficial to the client."

The contingent fee agreement of September 20, 1979 was not beneficial in any way to Petitioner whose pleas to take the case under judicare assistance were rejected by Attorney Hutter. He also insisted that Dr. Kaushiva enter into an agree-

ment with Attorney Lilly before he would take the case, even though he was apprised that Attorney Lilly had waived any claims to fees subsequent to his withdrawl in August 1979.

The contingent fee agreement was obtained by coercion and undue pressure and thus should be held invalid.

Dr. Kaushiva has stated under oath that he was coerced into signing the agreement. Coercion as referred to here is a legal characterization of undue influence.

Courts have held that undue influence is a legitimate defense to an action based on a contract. Gaver v. Gaver, 4F.2d 132, 138, 139 (4th Cir. 1939).

In fact, it was Attorney Hutter who breached the agreement by his premature withdrawl without discharging his contractual responsibilities. All these court actions and administrative proceedings are basically still on-going and petitioner

has had to hire other attorneys or proceed pro se at tremendous cost.

Attorney Hutter failed to meet his burden of proof in alleging breach of contract on the part of his client. See Brownin v. Catholic University of America, 527 F.2d 843, 174 U.S. App. D.C. 60 (1975).

It is a well established precedent that a client has a right to discharge his attorney, even when he is retained under the contingent fee agreement. Fletcher v. Kellogg, 55 App. D.C. 351, 6 F. 2d 476, cert. denied, 269 U.S. 555 (1925).

For Attorney Hutter to have met his burden of proof he was required to prove not only that Dr. Kaushiva was responsible for terminating the contract, but that there was no basis whatsoever for his being discharged as Dr. Kaushiva's attorney.

In fact, Attorney Hutter's testimony expounds at great length on his unwillingness to represent Petitioner and his lack of time to make the required transcript

corrections and filing the Arbitration Brief in accordance with the mandate of Arbitration Board, grounds which are adequate for terminating an attorney-client relationship.

II

Attorney Hutter should only have been awarded the reasonable value of his services. The Court's ruling to the contrary impedes the Petitioner's right to legal representation under the Constitution.

Even where an attorney, employed under a contingent fee agreement, is dismissed without cause, he is only entitled to the value of the services which he actually performed. Otherwise, the client's right to choose his own lawyer would have little practical value. Friedman v. Harris, 158 F. 2d 187-188 (D.C. Cir. 1946). This is the law of the case in the District of Columbia and in numerous jurisdictions. Cf: Padillo v. American Export Isbrantsen Lines, Inc., 305 F Supp. 250 (S.D.N.Y. 1969). Batter v. Williams, 316 F. 2d 540 (5th Cir. 1963).

Also this case is a matter of exceptional importance from legal point of view.

Petitioner respectfully represents that the case of Mackie v. Howland, 3 App. D.C. 461 (1894), which was found to be the controlling precedent in their decision, should be overruled because (1) there is not an iota of substantial performance on the part of Attorney Hutter; and (2) it is out of step with more modern and better reasoned authority in this area of law, which better serves the constitutional interests of the bar and the client.

It is totally wrong that attorney Hutter substantially performed the services called for in the applicable agreement. Your Petitioner feels obliged to point out to this Court that the agreement required attorney Hutter to also represent him in several other court cases, most of which are still active.

But even conceding the lower Court's finding for the sake of argument, Petitioner contends that Mr. Hutter will be fairly compensated under the quantum meruit rule if adopted

by this Court. Certainly, the Court can take into consideration Mr. Hutter's experience, hours expended and the significance of his contribution to achieving the final award in ascertaining the appropriate compensation.

The Court's decisions are premised on misrepresentations on the part of Mr. Hutter and his then attorney Mr. Steffen Graae and several irregularities resulting in a legal fraud. Judgment in favor of attorney Hutter is erroneous based on misrepresentations, misunderstanding, undue influence which all have contributed to prejudicial findings and deprivation of petitioner's constitutional rights of due procedure and process.

The case of Mackie v. Howland, 3 App. D.C. 461 (1894) holds that where a client and attorney enter into a contingent fee agreement, and the attorney is discharged by the client after substantially performing the services called for by the agreement, the attorney is entitled to the full contingent fee. This view of the law, known as the "contract theory",

applies contract theory to deal with the attorney-client relationship, which is acknowledged to be unique in the law. While, there are a number of rationales advanced for the traditional contract view set forth in Mackie v. Howland, supra, the trend has been to discard this approach because it is based on the erroneous premises that a contract for legal services is the same as any other contract. Heinzman v. Fine, Fine, Legum & Fine, 217 Va. 958, 234, S.E. 2d 282, 285 (1977).

It is clear that agreements for legal services differ from all other contracts:

> It is a misconception to attempt to force an agreement between attorney and his client into conventional modes of commercial contracts. While such a contract may have similar attributes, the agreement is, essentially, in a classification peculiar to itself. Such an agreement is permeated with the paramount relationship of attorney and client with necessary affects the rights and duties of each.

Krippner v. Matz, 205 Minn. 497, 506, 237 N.W. 19, 24 (1939). See Covington v. Rhodes, 38 N.C. App. 61, 247 S.E. 2d 305, 309 (1978); In re Estate of Poli, 134 N.J. Super. 222, 338 A. 2d 888, 891 (1975); Baker v. Zikas, 176 Neb. 290, 125 N.W. 2d 715, 717 (1964).

The primary distinguishing feature of the attorney/client relationship is the client's unquestioned right to discharge the attorney for any reason without being in breach of such an agreement. The client needs "to have confidence in the integrity and ability of his attorney and, therefore, /he needs/ to have the ability to discharge his attorney when he loses that necessary confidence in the attorney". Rosenberg v. Levin, 409 So. 2d 1016, 1019 (1982).

> Seldom does a client stand on equal footing with an attorney in the bargaining process. Necessarily, the layman must rely upon the knowledge, experience, skill and good faith of the professional. Only the attorney can make an informed judgment as to the merit of the client's legal rights and obligations, the prospects of success or failure, and the value of the time and talent which he must invest in the undertaking. Once fairly negotiated, the contract creates a relationship unique in the law. The attorney/client relationship is founded upon trust and confidence, and when the foundation fails, the relationship may be, indeed should be, terminated.

Heinzman v. Fine, Fine, Legum & Fine, 217 Va. 958, 234 S.E. 2d 282, 285 (1977). This uniqueness is acknowledged and recognized by the universally accepted and well-settled rule in this jurisdiction as well as others, that the client may termi-

nate the attorney/client relationship at any time, with or without cause, no matter how arbitrary. See U.S. v. Thomas, 146 U.S. App. D.C. 308, 450 F. 2d 1355 (1971); Edmonston v. Stanley, 78 A. 2d 872 (D.C. Mun. App. 1951); Evans v. Ockerhousen, 69 App. D.C. 285, 100 F. 2d 695 (1939); Marquam v. Vachon, 7 F.2d 607 (9th Cir. 1925); Application of Kellogg, Emery & Inness-Brown, 33 N.Y.S. 2d 949, 954 (1942).

> The right to discharge is of little value if the client must risk paying the full contract price for services not rendered upon a determination by a court that the discharge was without legal cause. The client may frequently be forced to choose between continuing the employment of an attorney in whom he has lost faith, or risking the payment of double contingent fees equal to the greater portion of any amount eventually recovered. . . . Unless a rule is adopted allowing an attorney a full compensation the reasonable value of services rendered to the time of discharge, clients will often feel required to continue in their services attorneys in whose integrity, judgment or capacity they have lost confidence.

Fracasse v. Bent, 6 Cal. 3d 784, 790-90, 100 Cal. Rptr. 345, 388-89, 949 P. 2d 9, 12-13 (1972). In recognition of this dilemma, several jurisdictions follow the rule that there

is an implied condition in every such agreement that the client may discharge the attorney at any time without liability for breach of contract. See Application of Kellogg, Emery and Inness-Brown, supra, 33 N.Y.S. 2d 954; Martin v. Camp, 219 N.Y. 170, 114 N.E. 46 (1916).

Unquestionably, the attorney's interest in fair compensation for services performed must be safeguarded as well. It must be kept in mind however, that "attorneys have never had the right to enforce contractual provisions for more than a fair and reasonable fee. They are not business men, entitled to charge what the traffic will bear". American Trial Lawyers Ass'n v. N.J. Supreme Court, 126 N.J. Supr. 577, 591, 316 A. 2d 19, 27 (1973).

> An attorney at law is an officer of the court; a minister of justice. He is entitled to fair compensation for his services, but since, because of the highly confidential relationship, the client may discharge him even without just cause, he should receive reasonable compensation for the work he has done up to that point, and not the agreed fee he probably would have earned had he been allowed to continue in his employment. This rule is not

> unfair to the attorney. He will receive fair compensation for what he has done; his position as an officer of the court does not entitle him to receive payment for services he has not rendered.

Cole v. Myers, 128 Conn. 223, 21 A. 2d 396, 399-400 (1941).

Petitioner respectfully submits that the quantum meruit rule, or a variation of it, is a better rule because it affords "the best balance between the desirable right of the client to discharge his attorney and the right of an attorney to reasonable compensation for his services". Rosenberg v. Levin, supra, 247 S.E. 2d at 308 and cases cited therein. Indeed, the trend is toward adoption of such a rule. In Re Estate of Poli, supra, 338, A. 2d at 890. The quantum meruit rule "secures to the attorney the right to recover the reasonable value of the services which he has rendered, and is well calculated to promote public confidence in the members of an honorable profession whose relation to their client is personal and confidential". Martin v. Camp, 219 N.Y. 170, 114 N.E. 46, 48 (1916).

CONCLUSION

The decisions of the court below have resulted in a constitutional deprivation of due process under the 6th and 14th Amendments and the petitioner's right to legal representation under the Constitution have been violated.

Additionally, one very persuasive reason for a grant of the writ in this case is the dire need to reform and update the law relating to attorney's contingent fees to align it with the present day societal demands in order to prevent it from becoming a focal point for fraud in the hands of unscrupulous lawyers.

The question presented by this case is of great recurring significance in the administration of justice relative to contingent fee contracts and elsewhere. The important nature of these issues has already been recognized by this court and makes this case a peculiar and appropriate one for the excercise of this court's jurisdiction to provide equal justice under law.

For the foregoing cogent reasons,

petitioner respectfully urges that this petition for a writ of certiorari be granted.

Respectfully submitted,

Dr. Brahma S. Kaushiva
pro se

Petitioner

Dated this 10th day of May 1983

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 81-1625

BRAHMA S. KAUSHIVA, APPELLANT,

v.

ALLEN M. HUTTER, APPELLEE.

Appeal from the Superior Court
of the District of Columbia

(Hon. William E. Stewart, Trial Judge)

(Argued November 16, 1982 Decided January 12, 1983)

Manuel A. Palau for appellant. *Brahma S. Kaushiva* was on the brief pro se.

Allen M. Hutter pro se. *Steffen Graae* was on the brief for appellee.

Before NEWMAN, *Chief Judge*, and NEBEKER and PRYOR, *Associate Judges*.

NEWMAN, *Chief Judge*: Appellant Kaushiva appeals a judgment of the trial court requiring him to pay appellee Hutter attorney's fees as specified in a contingency fee agreement ("Agreement") between the two. The trial court ordered appellant to pay $22,422.48, which represents 15 percent of his recovery in the arbitration dispute for which he had retained appellee as counsel. Appellant argues that appellee did not complete performance of the contract and is thus entitled only to quantum meruit for

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his services.[1] We disagree and affirm the trial court's judgment. We hold that an attorney who enters into a contingency fee agreement with his client, substantially performs, and is then prevented by his client from completing performance is entitled to the full amount specified in the fee agreement. Only where an attorney renders less than substantial performance will quantum meruit be the appropriate measure of damages.

I

On or about September 15, 1979, appellant sought the professional services of Mr. Hutter. The two entered into a contingent fee agreement, drawn up by appellant at his insistence, on September 20, 1979. The Agreement provided that Hutter would act as appellant's counsel in an arbitration matter scheduled for hearing on September 24, 1979, and in related suits filed in the Superior Court of the District of Columbia, and in the United States District Court and the United States Court of Appeals for the District of Columbia Circuit. Hutter agreed to undertake this representation for a fee of 15 percent "of any amount of damages recovered in connection with [that case]." Finally, the Agreement provided that appellant would pay 15 percent of the damages recovered to Hutter's predecessor, Joseph T. Lilly, Esquire. The Agreement was signed by Lilly, Hutter, and Kaushiva.

The trial court found that the Agreement constituted a "perfectly proper arrangement of benefit to both parties and of immediate benefit to a plaintiff [Kaushiva] who is momentarily financially embarrassed, unable to retain counsel on any other basis." It also found the 15 percent figure to be substantially below what is a rea-

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[1] Appellant makes numerous additional allegations of error below, all of which we find are without merit.

sonable fee in the District of Columbia. Finally, the trial court found that although he was a layperson, appellant was a college professor and capable of understanding the obligation to which he had bound himself.

Appellee had been reluctant to undertake this representation because there was so little time to prepare. Appellant assured him that virtually all the work for the arbitration hearings had been done. With these assurances appellee proceeded to represent appellant at the September 24 and 25 arbitration hearings and again at the one held on November 2, 1979. At that last date, the arbitrators asked that additional briefs be filed by December 14, 1979.

Immediately following the hearing on November 2, Hutter told appellant that he believed the case had been won and that he would have a draft of the final brief ready two weeks before the deadline set by the arbitrators. On November 9, 1979, however, Kaushiva called Hutter and insisted that he be given a copy of the brief immediately. Hutter explained that he could not comply with that demand, particularly in light of the fact that he did not yet have the hearing transcripts which he would use in writing the brief. Kaushiva then stated that he would not work with Hutter on this basis and terminated the relationship with him. Hutter confirmed the termination in a letter on November 12, 1979. Appellant then tried to bargain with Hutter over the fee, offering him $300 per day of hearings for a total of $900. Hutter refused to accept this compromise.

Subsequently, Hutter filed suit in Superior Court to require payment of the fee set forth in the Agreement, alleging that he had substantially performed and was prevented by his client from completing performance. Appellant filed a counterclaim for damages. At trial on

November 23, 1981, Judge Stewart found that Hutter had substantially performed and that Kaushiva had frustrated final performance. He also found that appellant had "failed to establish by a fair preponderance of the evidence his entitlement to recover on the counterclaim." Finally, the court found damages for Hutter in the amount of $22,422.48. That figure represented 15 percent of Kaushiva's $149,483.17 arbitration award.

II

In reviewing the decision of the trial court, this court "may not set aside [the] judgment 'except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.' " D.C. Code 1973, § 17-305(a); *John McShain, Inc. v. L'Enfant Plaza Properties, Inc.*, 402 A.2d 1222, 1224 (D.C. 1979); *see also Max Holtzman, Inc. v. K&T Co.*, 344 A.2d 51, 54 (D.C. 1975). That is not the case here. There is ample evidence in the Record to show that there was a contingent fee arrangement. A copy of the Agreement was presented at trial. The court specifically found that there had been a mutual exchange of promises and consideration such as would support a contract. Moreover, appellee showed that he had substantially performed under the Agreement. He did, in fact, represent appellant at the arbitration hearings in September and November of 1979, a fact which appellant does not deny. There was also evidence that appellee was at all times ready, willing, and able to continue his representation of appellant. Finally, the Record shows that appellant prevented appellee from completing his performance by discharging him without cause. Appellant's telephone call to appellee on November 9, 1979, together with appellee's confirming letter of November 12, 1979, provided adequate evidence that Kaushiva terminated Hutter's serv-

ices prior to the completion of the work necessary to obtain final action in Kaushiva's favor. Thus, the evidence below is sufficient to sustain the court's judgment as to appellee's entitlement to his fee.

That judgment conforms to *Mackie v. Howland*, 3 App. D.C. (1894). In that case, the attorneys had performed substantial services over several years in an attempt to collect on behalf of an estate amounts due on certain bonds issued by the Republic of Venezuela. The attorneys were discharged shortly before payments were received and substitute counsel thereupon completed the transaction. The court held that the discharged attorneys were due the full amount of their contingency fee as they had substantially performed under the contract and were at all times ready, able and willing to complete what remained to be done. *Mackie, supra.* Here, too, appellee had substantially performed under the Agreement and had expressed his willingness to complete his obligations to appellant. He was therefore entitled to receive his full fee, as did the attorneys in *Mackie.*

This result is consistent with cases in other jurisdictions holding that where an attorney is discharged without cause and the client subsequently recovers, the attorney is entitled to the full amount of his fee. *See, e.g., Walters v. Hastings*, 500 P.2d 182 (N.M. 1972); *Mandell & Wright v. Thomas*, 441 S.W.2d 841 (Tex. 1969); *In re Downs*, 363 S.W.2d 679 (Mo. 1963); *Osman v. Koke*, 188 N.E.2d 67 (Ohio App. 1961); *Jones v. Kubalek*, 334 P.2d 490 (Or. 1959).

We hold, therefore, that the trial court did not err in finding that appellee Hutter was entitled to his contingency fee.

Affirmed.

[98]

District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001
(202) 638-7113

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED FEB 10 19

No. 81-1625

BRAHMA S. KAUSHIVA, Appellant,

v. 10617-80

ALLEN M. HUTTER, Appellee.

BEFORE: *Newman, Chief Judge; Kelly, Kern, *Nebeker, Mack, Ferren, *Pryor, Belson, and Terry, Associate Judges.

O R D E R

On consideration of appellant's petition for rehearing and rehearing en banc, it is

ORDERED by the merits division* that appellant's petition for rehearing is denied. It appearing that no judge of this court has called for a vote thereon, it is

FURTHER ORDERED that appellant's petition for rehearing en banc is denied.

PER CURIAM

Copies to:

Honorable William E. Stewart, Jr.

Clerk, Superior Court

Brahma S. Kaushiva
4623 Lincoln Avenue
Beltsville, MD 20705

Allen M. Hutter, Esquire
1115 Massachusetts Avenue NW, 20005

cmj

	David	T. Fo
1981	JOI[illegible] ISSUE C	
6	This motion to Reconsider Order is hereby granted. Vacate the Court's order of 5/22/81. However, the costs of $50.00 to remain. Dft's mtn to Shorten time in which to Answer Interrogatories and Request for Production of Documents, is hereby denied. BB.	J. Monc
3/81	Eleanor T. McElveny, Official Court Reporter, duly commenced Proceedings in said cause. Defendant's Oral motion for Directed Verdict at the close of the plaintiff's case. Court grants Defendant's motion to dismiss Counterclaim. Jury granted. Court finds for the plaintiff on the original claim as to the counterclaim (p[illegible] the court finds for the plaintiff (See judgment order [illegible]). (1)	MICRO

THE COURT: Let me address seemingly a little housekeeping at the outset. This suit was filed on the 1st day of August, 1980. Apparently on June 5th, 1981, the defendant filed a motion for enlargement of time and for leave to amend answer by filing of counterclaim and for expedited response to said motion and counterclaim.

This motion was, the parties agreed, never past that point. Now, whether that is something that should be subject of finger-pointing at the Court or at counsel is

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something else. When such a motion is filed, a motions card is supposed to be filed with it so that the motion, if contested, would be set up for a hearing. I have no way of knowing at this point whether such a motion was filed -- such a motions card was filed.

There is no question but that under the rules, the counterclaim was not timely filed but on the other hand, the subject matter of this counterclaim would constitute a compulsory counterclaim and the Court has heard the evidence in this case and feels that in the interest of justice and the ordinary processing of claims that the leave sought should be granted. It is granted and the counterclaim is before the Court to be treated on its merits.

Now, we have a simple contract action. A little bit out of the ordinary because the Court finds that a professional person permits a lay person and client to come into his office in mid-September, 1979, and submit a prepared retainer agreement. Be that as it may, the Court finds from the testimony that the defendant Dr. Kaushiva sought professional services of the plaintiff, an attorney, on or about the 15th day of September, 1979.

There was discussion as to the nature of the work to be done but it is, as described in the written instrument signed by the parties and called a retainer agreement, Plaintiff's Number 1, and according to that instrument, there was 12

contemplated initially the participation in an arbitration proceeding and dependent upon the outcome of these arbitration proceedings, participation limited or otherwise in litigation pending in several courts in the District of Columbia.

It is obvious that the determination -- that is, the final determination -- of the arbitration proceedings would be dispositive of most, if not all, of the other litigation. That is, until we get into the area of client versus attorney or vice versa.

In any event, the defendant, a college professor, prepared this instrument and had it executed and both parties are bound by it. There is no question but that it is a contingency fee arrangement, a perfectly proper arrangement of benefit to both parties and of immediate benefit to a plaintiff who is momentarily financially embarrassed, unable to retain counsel on any other basis.

There is no question but that the contingency fee percentage provided for in this instance, insofar as the plaintiff Hutter is concerned, is substantially less than what is considered reasonable contingency fee arrangements in the District of Columbia.

The arbitration proceedings were, indeed, held on the 24th and 25th of September. It was those dates which Dr. Kaushiva was concerned about when he first consulted Mr. Hutter and his representation at the proceedings scheduled 12

on those days. Apparently what was contemplated as a two day arbitration proceeding did not conclude within two days and the other available dates either immediately following or closer to the 25th day of September than November 2nd were dates on which Mr. Hutter had other professional engagements to which he was committed and it was certainly no breach of any duty on his part to obtain the earliest convenient date so that he could continue to devote his professional efforts to the success of his client.

Well, the last day of the hearing was on November 2nd at which time Mr. Hutter apparently scenting the sweet smell of success told his client despite this being a losing cause in the hands of another lawyer in the distant past, I am going to bring in a winner for you. The enthusiasm of the lawyer spread to the client and they enjoyed lunch together.

Now, there was a further deadline to be met -- the submission of a written brief by the 14th day of December. Apparently Dr. Kaushiva believed that his case and his case alone was in the office of Mr. Hutter and that it was entitled to constant and immediate attention.

Mr. Hutter, when questioned by his client about the brief, pointed out that he did have some other work to do but that he would furnish the client with a draft of the brief by the 1st day of December, two weeks in advance of the date on which it was due to be filed. This was not satisfactory to

the defendant, whose attitude was that this was not consistent with what he felt were the services he was entitled to and he told Mr. Hutter he was terminated as his lawyer.

He then attempted to bargain with Mr. Hutter on a per diem basis which the plaintiff was unwilling to accept.

There is no question but that there were mutual promises. There was consideration and that the contract executed by the parties was binding. There was a meeting of the minds in every sense of the word.

So now the question is can one party to a contract frustrate the performance by the other and then say because the other did not fully perform, that the other breached the contract. The law does not tolerate nor accept such logic or reasoning.

As of November 9, 1979, Mr. Hutter was able, willing and ready to continue the performance of his professional contract. He could not do that after he was terminated by Dr. Kaushiva.

He is entitled to the fifteen percent contingency fee which the Court finds to be the sum of twenty-two thousand four hundred twenty-two dollars and forty-eight cents. The Court will not allow the interest claim as made of six percent since October 22nd, 1980. It is obvious from these findings of fact that it follows that the defendant has failed to establish by a fair preponderance of the evidence his

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entitlement to recover on the counterclaim. The verdict on the counterclaim is for the plaintiff. Judgment in favor of plaintiff in the sum of twenty-two thousand four hundred twenty-two dollars and forty-eight cents.

(Thereupon, at 4:20 p.m. this hearing was concluded.)

* * *

CERTIFICATE OF REPORTER

I, Eleanor M. McClenny, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the trial in the case of ALLEN M. HUTTER vs. BRAHMA S. KAUSHIVA, Civil Action No. 10617-80, in said Court, on the 23rd day of November, 1981.

I further certify that the foregoing 128 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes.

In witness whereof, I have hereto subscribed my name, this the 10th day of December, 1981.

Eleanor M. McClenny
Official Court Reporter

ATTORNEY FEE AGREEMENT

D

WE, the undersigned, agree to THIS AGREEMENT made by and between Dr. Brahma S. Kaushiva, 4623 Lincoln Avenue, Beltsville, Maryland, 20705 and Allen M. Hutter, Attorney-At-Law, 1115 Massachusetts Avenue, Washington, D.C. 20005 and Joseph T. Lilly, Attorney-At-Law, Suite 304, 7676 New Hampshire Avenue, Langley Park, Maryland, 20783.

Dr. Brahma S. Kaushiva hereby agrees to pay Attorney Allen M. Hutter on the basis of contingent fee in connection with Arbitration Proceedings, Superior Court of the District of Columbia suits, U.S. District Court for the District of Columbia suit, U.S. Court of Appeals suit, and any other necessary action relative to Dr. Kaushiva matter.

Attorney Allen M. Hutter's fee shall be FIFTEEN (15) per cent of any amount of damages recovered in connection with the above case and said fee shall be payable for any money obtained by suit or settlement. IN THE EVENT OF NO RECOVERY BY DR. KAUSHIVA, DR. KAUSHIVA SHALL OWE ALLEN M. HUTTER NOTHING FOR SERVICES RENDERED.

Dr. Kaushiva and Attorney Allen M. Hutter will be in constant consultation in arbitral matters and Mr. Hutter will devote his full professional abilities to speedy conduct of the arbitration. These legal services are without any charge to Dr. Kaushiva who is not obligated to pay any legal fees personally for time and effort rendered by Attorney Hutter.

Dr. Kaushiva hereby agrees that under this contingent agreement FIFTEEN (15) per cent of any amount of damages recovered in connection with the above case prorated as to any wage recovery only upto August 11, 1979 will be paid to Attorney Joseph T. Lilly who represented Dr. Kaushiva in the proceedings prior to August 11, 1979 when the agreement dated October 31, 1977 between Dr. Kaushiva and Attorney Lilly terminated and became void. Attorney Lilly agrees to accept the 15% in full satisfaction of his claim for services rendered previously and agrees to make his withdrawl from all Kaushiva matters and to make all files and records available to Dr. Kaushiva with immediate effect. IN THE EVENT OF NO RECOVERY BY DR. KAUSHIVA, DR. KAUSHIVA SHALL OWE JOSEPH T. LILLY NOTHING FOR PREVIOUS SERVICES RENDERED. Dr. Kaushiva is not obligated to pay any legal fees personally for time, effort and services previously rendered by Attorney Lilly except the expenses itemized in Exhibit A hereto.

It is further understood and agreed that Dr. Kaushiva will be responsible for all arbitration and court costs and fees in connection with this case effective from the date of signing this Agreement.

DATE: September 20, 1979

Allen M. Hutter
ALLEN M. HUTTER

Joseph T. Lilly
JOSEPH T. LILLY

Brahma S. Kaushiva
BRAHMA S. KAUSHIVA

ALLEN M. HUTTER
ATTORNEY AT LAW
1115 Massachusetts Avenue, N.W.
Washington, D.C. 20005
---
(202) 667-0900

November 27, 1979

Dr. Brahma S. Kaushiva
4623 Lincoln Avenue
Beltsville, Md. 20705

Dear Dr. Kaushiva:

As we have recently agreed, I will no longer be representing you in your arbitration or any other subsequent proceedings relating thereto.

The letter is to remind you that you must file a brief with the Arbitrators on or before December 16, 1979. It is appropriate that the Arbitrators be informed of the termination of our relationship and that your new counsel, if any, enter his appearance promptly.

In order for the record to be current, I am submitting a copy of this letter to each of the Arbitrators so that they will know I am no longer in the case.

Very truly yours,

Allen M. Hutter

cc: Robert D. Moran, Esq
Dorsey Lane, Esq.
Dr. Constance Rotan
Robert L. Cohn, Esq.
Kirk A. Sheppard, Esq.
Al Carter, Esq.

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

F

78-1912

APPEAL FROM THE DISTRICT COURT

TITLE OF CASE	ATTORNEYS FOR APPELLANT
	Joseph T. Lilly 589-4900 Suite 701 850 Sligo Avenue Silver Spring, MD 20910
DR. BRAHMA S. KAUSHIVA,	** Pro Se: Dr. Brahma S. Kaushiva 301-937-24 4623 Lincoln Avenue Beltsville, Maryland 20705
APPELLANT	
V.	
UNIVERSITY OF THE DISTRICT OF COLUMBIA, ET AL.	ATTORNEYS FOR APPELLEE
	DC: Richard W. Barton 727-62 Edward E. Schwab Corp. Counsel District Building 20004 Louis P. Robbins

No. BELOW: Civil Action No. 77-2176

JUDGE BELOW: Louis F. Oberdorfer

DATE OF JUDGMENT: 6/29/78 and 7/31/78

NOTICE OF APPEAL FILED: 8/16/78

DATE	ACCOUNT OF APPELLANT	RECEIVED	DISBURSED	REMARKS
9-25-78	#72,738	$50 00		

CIVIL DOCKET CONTINUATION SHEET PRECEDING PAGE #1.

UBERDORFER, J.

PLAINTIFF	DEFENDANT	DOCKET NO. 77-2170
DR. BRAHMA S. KAUSHIVA	UNIVERSITY OF THE DISTRICT OF COLUMBIA, et al.	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS

PARTIES G COUNSEL

DR. BRAHMA S. KAUSHIVA — Joseph T. Lilly
~~Suite 700~~
~~7979 Old Georgetown Road~~
~~Bethesda, Maryland 20014~~
~~Tele: 657-2500~~
850 Sligo Ave., Suite 701
Silver Spring, Md. 20910
Tele: 589-4900

vs.

1) UNIVERSITY OF THE DISTRICT OF COLUMBIA — 1) William J. Earl
500 Indiana Ave., N.W., Rm71
Tele: 727-3889

2) THE DISTRICT OF COLUMBIA — 2) - do -

3) THE BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA — 3) - do -

4) DR. CLEVELAND L. DENNARD individually and in his official capacity as President of Washington Technical Institute — 4)

5) SAMUEL M. NABRIT, as a member of the Board of Vocational Education — 5) William J. Earl

6) CAROLYN A. TWINAME, as a member of the Board of Vocational Education — 6)

7) OSBY L. WEIR, as a member of the Board of Vocational Education — 7)

8) J. HILLMAN ZAHN, as a member of the Board of Vocational Education — 8)

SEE OVER

DC-111A REV (1/78)

DISTRICT/OFFICE	YR.	NUMBER	MO.	DAY	YEAR	...	...	...	...	OTHER	NUMBER	DEM.	YR.	NUMBER
0090/1	77	2176	12	21	77	3	790	1				9053	P	77	2176

PLAINTIFFS | DEFENDANTS

DR. BRAHMA S. KAUSHIVA

OBERDORFER, J.

UNIVERSITY OF THE DISTRICT OF COLUMBIA, et al.

SEE PRECEDING PAGE FOR COMPLETE CAPTION

CAUSE

Deprevation of rights under the Fifth amendment of the United States Constitution brought under 28 USC 1331.

jaw

ATTORNEYS

see preceding page

see preceding page

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

UNITED STATES DISTRICT COURT COCKET

OC-111 (Rev. 1

DATE			PROCEEDINGS H	PLTF'S COSTS	DEFT'S COSTS
	DAY	YEAR			
	9	78	Praecipe filed entering the appearance of W[illegible]rl, & Rose Grant Assistant Corporation Counsel, on behalf of defts., University of the District of Columbia, Robert Mackie, Alton Wilson and William Watson.		
	23	78	Pltf's Motion For Leave To Amend The Complaint By Reference.		
	9	78	Praecipe filed changing address of plaintiff counsel.		
	15	78	Praecipe filed dismissing without prejudice, Dr. Dennard as a party defendant filed by plaintiff.		
	21	78	Dr. Dennard dismissed as deft. per praecipe filed by pltf. JUDGE GOODRICH		
	2	78	Order - Pltf. motion for leave to amend the complaint by reference granted. JUDGE GOODRICH		
	2	78	ORDERED that plaintiff's Motion for Leave to Amend the Complaint By Reference be and hereby is granted. JUDGE GOODRICH		
	10	78	Praecipe filed requesting that a default against Lawrence Douglass Jamison be entered filed by plaintiff.		
	10	78	Motion For Summary Judgment filed by plaintiff.		
	10	78	Motion To Join filed by plaintiff.		

PLAINTIFF'S ATTORNEY	PARTIES	NATURE OF ACTION
SEPH T. LILLY	DR. BRAHMA S.KAUSHIVA	ARBITRATION
	VS.	
	(1) LOCAL 2142, WASHINGTON TECHNICAL INSTITUTE, AMERICAN FEDERATION OF TEACHERS	
	(2) DR. CLEVELAND L. DENNARD	
SHER, JR. & EARNEST,	(3) UNIVERSITY OF THE DISTRICT OF COLUMBIA	
LSON, # 3,4,5	(4) ROBERT MACKIE	CLASS
DEFENDANT'S ATTORNEY	(5) ALTON WILSON	
	(6) ELI ROSENFIELD	
	(7) WILLIAM WATSON	
	AND	
	(8) LAWRENCE DOUGLASS JAMISON	

Aug	10	79	Order signed and filed. JUDGE GOODRICH
Aug	29	79	Plaintiff's Motion To Represent In Proper Person filed.
Aug	30	79	Motion For Leave To Withdraw filed by Joseph T. Lilly, Esquire.
Sep	6	79	Order - motion of plaintiff's attorney for leave to withdraw granted. JUDGE GOODRICH
Sep mfld 9-11-79	6	79	ORDERED that the motion of Joseph T. Lilly, counsel for the plaintiff, for leave to withdraw be, and the same hereby is, granted. JUDGE GOODRICH
Mar	24	80	Plaintiff's Motion For Confirmation Of Arbitration Award filed.
Apr	8	80	Plaintiff's Motion To Treat Pending Motion Of Plaintiff As Conceded filed.
Apr	8	80	Motion Of District of Columbia Defendants To Extend Time filed.
Apr	9	80	Plaintiff's Opposition To Motion Of District Of Columbia Defendants To Extend Time filed.
Apr	10	80	Order - Def's motion to extend time granted to April 22, 1980; hearing on motion for confirmation set for April 29, 1980. JUDGE GOODRICH

PLAINTIFF'S ATTORNEY	PARTIES	CAUSE OF ACTION
	Dr. Brahma Kaushiva	
DEFENDANT'S ATTORNEY	VS	CLASS
	Local 2142, et al	

PLEASE DO NOT WRITE BELOW HERE.

BEFORE THE BOARD OF ARBITRATORS

I

OBERT D. MORAN
ppointed Neutral Arbitrator, Chairman

IRK A. SHEPPARD, Member
OBERT L. COHN, Member
ppointed by Dr. Brahma S. Kaushiva, Grievant

ONSTANCE S. ROTAN, Member
ORSEY E. LANE, Member
ppointed by the Board of Trustees of the
niversity of the District of Columbia

n the Matter of	:
R. BRAHMA S. KAUSHIVA	:
	: FMCS Arbitration No. 78K/18983
s.	:
HE UNIVERSITY OF THE DISTRICT OF OLUMBIA, et al.	:
	:

GRIEVANT'S BRIEF

Manuel A. Palau
Dunn & Emig, P.A.
Suite 200, 5020 Sunnyside Avenue
Beltsville, Maryland
(301) 345-7002

Attorneys for Grievant

ROBERT D. MORAN
ATTORNEY AT LAW

2029 O STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-1759

March 14, 1980

Albert L. Carter, Jr., Esq.
Office of the General Counsel
University of the District
of Columbia
4200 Connecticut Avenue, NW
Washington, D.C. 20008

Manuel A. Palau, Esq.
Dunn & Emig, P.A.
5020 Sunnyside Ave. - Suite 200
Beltsville, MD

Re: FMCS Arbitration No. 78K/18983
Dr. Brahma S. Kaushiva and the University of the District of Columbia

Gentlemen:

Enclosed herewith is the decision of the arbitratic tribunal in the above-listed proceeding.

Also enclosed is the statement of the fees and expenses incurred by the undersigned in connection therewith.

Very truly yours,

Robert D. Moran

ROBERT D. MORAN

cc: Dr. Brahma S. Kaushiva
4623 Lincoln Avenue
Beltsville, MD 20705
w/encls

Enclosures

ORNEY AT LAW

K

2029 O STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-1759

March 14, 1980

Albert L. Carter, Jr., Esq.
Office of the General Counsel
University of the District
of Columbia
4200 Connecticut Ave., NW
Washington, D.C. 20008

Manuel A. Palau, Esq.
Dunn & Emig, P.A.
5020 Sunnyside Avenue
Suite 200
Beltsville, MD

Re: FMCS Arbitration No. 78K/18983
Dr. Brahma S. Kaushiva and the University of the District of Columbia

STATEMENT OF FEES AND EXPENSES

4 days of hearings, 2 of meetings, and 4 studying transcript, evidence and writing decision (10 at $275 per day)		$2,750.00
Expenses:		
Typing and photocopy	$45.55	
Use of meeting room	40.00	
Taxi fare (9-4-79)	5.75	91.30
		$2,841.30

TO BE PAID BY THE UNIVERSITY OF THE DISTRICT OF COLUMBIA $1,420.65

✓ TO BE PAID BY DR. KAUSHIVA $1,420.65

L

Hand Delivered

DR. BRAHMA S. KAUSHIVA

4623 Lincoln Avenue
Beltsville, Maryland 20705

December 7, 1979

Mr. Robert D. Moran
Chairman, Arbitration Board

Dr. Dorsey E. Lane, Member
Mrs. Constance S. Rotan, Member

Mr. Robert L. Cohn, Member
Kirk A. Sheppard, Member

RE: FMCS Arbitration No.
78K/18983

Grievance as ordered by
Superior Court concerning
Dr. Kaushiva C.A. No.5792-77
Civil I - Judge Goodrich

Dear Arbitrators:

Kindly refer to communications of October 26, 1979 and November 9, regarding correction of transcripts.

I am awaiting your ruling about incorporating the corrections (to be incorporated) to September 24 and 25 transcripts made by Acme. In this ruling the manner in which the Errata, Addenda, Corrigenda supplied for Volume I pages 1-16 and amended Cover Page, pages 1-2 are to be incorporated in the volume by retyping may kindly be outlined for guidance and compliance.

As I supplied the sample of corrected version pp. 1-12; 131-134 with the certificate from Neal R. Gross Reporting Company and Dr. Kaushiva based on the transcripts made by Gross from the tapes and corrections made by Dr. Kaushiva from the Acme version, a ruling may kindly be made that the Gross version of Volume II will be the official version.

As indicated earlier, the errors in Volume II are even more massive than Volume I as will be clear from the corrected volume sent herewith. If the arbitrators are not inclined to accept Gross version, an Erreta, Addenda, Corrigenda can be prepared for this volume as well after the ruling is made with respect to the manner in which the erreta and addenda will be incorporated in the volume by retyping. However, the cost inclusive of time spent in this effort will be paid by the university exclusively as it was their responsibilty to get correct transcripts made as specified by Mr. Moran.

Separately, I am addressing a letter to Acme to explain why such gross errors of attribution and certification were made possible when there were stenotype notes taken and tapes were simultaneously made by the reporter. All the notes and the tapes should be available for verification in case of dispute and for Acme to clear their position that there is no fraud involved.

As informed in November 9 letter and confirmed by Mr. Hutter's letter of November 27, I am not being represented by him.

Yours truly,
Brahma S. Kaushiva

Vol. II with Corrections

HAND DELIVERED

M

DR. BRAHMA S. KAUSHIVA

4623 Lincoln Avenue
Beltsville, Maryland 20705

November 9, 1979

Mr. Robert D. Moran
Chairman, Arbitration Board

Dr. Dorsey E. Lane, Member
Mrs Constance S. Rotan, Member

Mr. Robert L. Cohn, Member
Kirk A. Sheppard, Member

RE: FMCS Arbitration No.
~~79K/18983~~
78K/18983

Grievance as ordered by
Superior Court concerning
Dr. Kaushiva C.A.No.5792-77
Civil I- Judge Goodrich

Gentlepersons:

Kindly find herewith the following materials:

Volume I: 1. Errata, Addenda, Corrigenda Volume I pages 1-16 (Acme)
2. Cover page, page 1 and page 2 as amended and approved.

Volume II: 1. Sample of corrected version pp. 1-12; 131-134; (Gross)
Certificate from Neal R. Gross Reporting Company.
Certificate from Dr. Kaushiva.
2. Executive Session portion pp. 118 to 132 (Acme) with blank errata sheets for corrections, if any.

Volume III: 1. Transcript (Alderson) & 132a
2. Errata, Addenda, Corrigenda

If Neal Gross corrected version is not acceptable, the errata, addenda, and corrigenda will be furnished and Acme will be required to furnish the retyped and corrected version.

It is presumed that Mr. Carter on behalf of the University of the District of Columbia has already furnished the unaltered volumes I & II of Acme version to all the arbitrators on November 9, 1979. It was his responsibility.

I am furnishing Volume III now which was due on November 16, 1979.

The Brief will be due on December 14, 1979 and it will be duly furnished. It will be appreciated if ground rules and dates are laid by Chairman Moran for the reply brief to avoid delays and unnecessary paper work.

Mr. Hutter is extremely busy and was engaged on a limited appearance basis only for the days of hearing. Kindly note that I am not represented by Mr. Hutter presently and all the communications should be directed to me. Mr. Carter was informed of this on November 8, 1979. This action has been taken in consultation with Mr. Hutter to which he agrees.

Sincerely,

Brahma S. Kaushiva

Enclosures: as indicated above

CIVIL ACTIONS BRANCH

ALLEN M. HUTTER

N

VERSUS

BRAHMA S. KAUSHIVA

A—106178'80

DATE	COURT CLERK'S MEMORANDUM	JUDGE
AUG 1 1980	Pl's mtn for attachment before Judgement is granted. Bond set at #49,471.46	Taylor, H.
UG 8 1980	Deft's motion to quash attachment issued in the matter Court as a preliminary matter is set for 8-12-80 @ 10 AM To give Atty's time to file memorandums	J. Stewart
AUG 12 1980	Deft's motion to quash attachment & defaul judgment is denied. Deft's motion to dismiss and for summary judgment is set for 9/17/80 @ 10:00 am. A.O. notice to counsel	AUG 14 1980 J. Stewart
SEP 2 - 1980	Motion Set For Hearing, SEP 17 1980	SEP - 3 1980 H. Taylor
EP 17 1980	Deft's motion to dismiss complaint is denied. See order signed and filed herein.	J. Scott
	Motion Set For Hearing SEP 24 1980	

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

ALLEN M. HUTTER,	:	
Plaintiff	:	C. A. 10617-80
vs.	:	
BRAHMA S. KAUSHIVA, Ph.D,	:	Washington, D. C.
Defendant.	:	Friday, January 22, 1982

The above-entitled action came on for a motions hearing before the Honorable WILLIAM E. STEWART, Jr., Associate Judge, in Courtroom Number 22, commencing at approximately 2:10 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT REPORTER ENGAGED BY THE COURT WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HIS ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

STEFFAN GRAAE, Esquire
Washington, D. C.

On behalf of the Defendant:

BRAHMA S. KAUSHIVA, Ph.D., Pro se
4623 Lincoln Avenue
Beltsville, Maryland

Thomas Ronan
Official Court Reporter 727-1766

do today is what it is that I have already indicated to you. Sir, that is that I will sign an order when submitted which provides for a stay of the judgment in this action conditioned upon the posting of a twenty five thousand dollars supersedious bond. That is all that I can do, sir.

DR. KAUSHIVA: What about the writ part?

THE COURT: No, sir. No, sir. No, sir

DR. KAUSHIVA: Because that was also an order that was signed by you. The denial of the writ.

THE COURT: Sir, I denied a motion to quash the writ; did I not?

DR. KAUSHIVA: Right. Right.

MR. GRAAE: Your Honor, I don't think that you were ever involved in that portion of the case.

THE COURT: I think that was quite sometime ago and a long time ago that I did that.

MR. GRAAE: It was Civil I.

MR. HUTTER: Yes.

DR. KAUSHIVA: No, no, it was not Civil I, Your Honor. I can show you the --

THE COURT: I do recall that I screened this case for Civil I and I denied that.

DR. KAUSHIVA: Your Honor, this is the defendant's motion to quash which is denied and that was signed by Your

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

ALLEN M. HUTTER,

Plaintiff

vs.

BRAHMA S. KAUSHIVA,

Defendant

Civil Action No. 10617-80

Washington, D. C.

Monday, November 23, 1981

The above-entitled action came on for trial before the Honorable WILLIAM E. STEWART, JR., Associate Judge, in Courtroom Number 23, commencing at approximately 10:30 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HIS OR HER ORIGINAL NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

STEFFEN W. GRAAE, Esquire
Washington, D. C.

On behalf of the Defendant:

ALAN JOHN LEIDECKER, Esquire
Washington, D. C.

RECEIVED
JUN 24 9 07 AM '82
SUPERIOR COURT
DISTRICT OF COLUMBIA
COURTS

Eleanor M. McClenny, RPR/CP
Official Court Reporter
Telephone 727-1766

P R O C E E D I N G S

THE DEPUTY CLERK: Your Honor, we would call the matter of Allen M. Hutter versus Brahma Kaushiva, civil action 10617-80. Counsel, please identify yourselves for the record.

MR. GRAAE: I am Steffen Graae and I am representing Mr. Allen Hutter, plaintiff.

MR. LEIDECKER: I am Alan Leidecker and I representing Dr. Kaushiva, who is out of the courtroom but will be back in just one minute, Your Honor.

THE COURT: Have I had something to do with this case previously?

MR. GRAAE: Your Honor, at one point, I believe there was a motion to designate it as a civil I and then it ended up in your chambers.

THE COURT: All right, there is something familiar about it and I do the screening for placement of a case on civil I. I wouldn't think that that would have any bearing upon my ability to sit and try the case unless either one of you gentlemen feel to the contrary.

MR. GRAAE: No, Your Honor.

MR. LEIDECKER: No objections, Your Honor.

THE COURT: Very well. All right, sir, you want to wait, I assume, for your client to return?

MR. LEIDECKER: Yes, Your Honor. He will only be

Phone: (301) 937-2408

DR. BRAHMA S. KAUSHIVA

4623 Lincoln Avenue
Beltsville, Maryland 2

February 23, 1981

Honorable Judge Stewart
Judge of the Superior Court
of the District of Columbia
Civil Division
500 Indiana Avenue, N.W.,
Washington, D.C. 20001

RE: Consolidated Civil Actions
No. 10617-80 and No. 14539-80

Dear Judge Stewart:

I filed a motion for designating Civil I status in the above referenced matters on January 7, 1981 but it has not been submitted to you for a review and order so far.

Earlier, I had filed a similar motion in view of the complexity of the matters but it was denied presumably due to the fact that jacket was not submitted in complete form and other pending motions were detached from the jacket. Hence, I had to make this request for reconsideration.

This time also there have been delays and jacket has been missin leaving the jacket in incomplete form. So much so that when I finally got the opportunity to review the jacket with the Assist in the Motions Commissioner's office, the Bond was missing as we as some motions in CA No. 10617-80.

These matters are due for trial on March 3, 1981 and there are several pending motions. For example, Motion To Compel Answers to Interrogatories. A complete listing of actions and orders in these cases will truly reveal the complex nature of the cases.

I should be appreciative if an early review of the Motion to Designate Civil I is taken on an expedited basis in view of the close proximity of the trial date and in the interest of judicial economy and efficiency.

With highest regards.

Very truly yours,

Dr. Brahma S. Kaushiva
Defendant pro se
CA Nos. 10617-80 & 14539-81

CC: Honorable Judge Scott
Mr. Mike Stanley
Mr. West
Miss Lamb
Mr. Lilly
Mr. Grase

DR. BRAHMA S. KAUSHIVA
4623 Lincoln Avenue
Beltsville, MD 20705

July 1, 1982

Steffen W. Graae, Esq.
918 16th Street, N.W.
Washington, D.C. 20006

Re: Hutter v. Kaushiva

Dear Mr. Graae:

I went to the Clerk's Office of the D.C. Court of Appeals on June 29, 1982 and was informed that on February 12, 1982 the appe in No. 81-1624 had been dismissed based upon your stipulation to dismiss.

Your letter of February 10, 1982 to William Earl and endorse to me stated that you were sending me a copy so that I would be aware of what you were doing and could thereupon obtain release of funds still held by UDC. UDC is not releasing the remaining funds due me because of the writ of attachment, despite the fact that your client is fully protected by the supersedeas bond poste by me in the amount of $25,000.00. Please write to the Universit and request the release of funds owed me which UDC continues to hold because of the writ of attachment.

As was pointed out during the trial on November 23, 1981 and on January 22, 1982, the original bond in attachment before judgment (Bond No. 400FW6711) is not in the court record. If the writ of attachment is still current, I request that you provide me with an explanation of the status of the bond and the circumstances under which it was removed from the court file.

I would appreciate a timely response to my request because I am most concerned about this matter as we have discussed several times before. I am also concerned about the fact that documents were missing from the official court record and were taken out of the court system at crucial times relative to court rulings. Please provide me with any information and your observations about this unusual problem.

In addition, three plaintiff's exhibits were taken by you (without my knowledge) from the trial court record and the ones which have been furnished for the appeal record are not the exhibits originally marked during the trial. Would you kindly return to the Office of the Appeals Coordinator the exhibits originally marked so that they can be inserted in the record.

Would you also return to the court record (1) the two stipulated court orders of July 18, 1980 and September 15, 1980 and (2) the original joint stipulation/motion to dismiss the appeal. Thanking you in anticipation.

Sincerely,

Brahma S. Kaushiva July 1, 1982

Dr. Brahma S. Kaushiva

BSK/le

FILED
FEB -5 1982
Superior Court
of the District of Columbia
Washington, D. C.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

HUTTER

vs.

KAUSHIVA

CIVIL ACTION FILE NO.
10617-80

Judgment having been entered in the above entitled action on the day of , 19 , against the clerk is requested to tax the following as costs:

BILL OF COSTS

Fees of the clerk	$ 20.00
Fees of the marshal	
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	
Fees and disbursements for printing	
Fees for witnesses (itemized on reverse side)	
Fees for exemplification and copies of papers necessarily obtained for use in case	
Costs incident to taking depositions	
Cost as shown on Mandate of Court of Appeals	
Other Costs (Please itemize)	
Bond for Writ of Attachment before Judgment	250.00
Total	$ 270.00

District of Columbia
[State of
County of] , } ss:

I, STEFFEN W. GRAAE, ESQ. do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to BRAHMA KAUSHIVA, 4623 Lincoln Ave., Beltsville, Md. 20705 with postage fully prepaid thereon.

Please take notice that I will appear before the Clerk who will tax said costs on , 19 at

Steffen W. Graae
STEFFEN W. GRAAE, #183301
Attorney for Plaintiff

Subscribed and sworn to before me this 5th day of February, A. D. 19 82 at Wash., D.C.

My Commission Expires January 1, 1985

Notary Public.

Costs are hereby taxed in the amount of $ 270.00 this 29 day of June, 1982, and that amount is included in the judgment.

William E. Davis
Clerk.
JUDGE

By
Deputy Clerk.

NOTE: SEE REVERSE SIDE FOR AUTHORITIES ON TAXING COSTS.

T

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

ALLEN M. HUTTER
Plaintiff

v.

BRAHMA S. KAUSHIVA
Defendant

Civil Action Number 10617-80

MINUTES

The Minutes of the Hearing held on Friday, January 22, 1982 before the Honorable William E. Stewart, Jr., Associate Judge, in Court Room Number 22, to consider the pending motions and to clarify the status of the Writ of Attachment against the defendant, the missing bond furnished by plaintiff as a prerequisite for the issuance of the Writ, the missing court jacket, the correction and completion of record, the return of Exhibits to Court Clerk, and staying of execution of judgment are being furnished for purposes of record in conjunction with the Transcript by the Court Reporter:

1. Pending Motions before the Court:

   (a) STIPULATIONS filed January 19, 1982 with Proposed Order

   (b) MOTION FOR RECONSIDERATION AND RELIEF FROM JUDGMENT RE: New Trial filed December 31, 1981

   (c) MOTION FOR RECONSIDERATION OF THE ORDER OF DECEMBER 21, 1981
   RE: Stay of Judgment of November 23, 1981 filed 12/31/1981

   (d) SUPPLEMENT TO DEFENDANT'S MOTION FOR NEW TRIAL, AND/OR AMENDMENT & RELIEF OF JUDGMENT filed December 18, 1981

   (e) PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR RECONSIDERATION OF STAY OF JUDGMENT filed January 6,1982

   (f) PLAINTIFF'S BILL OF COST FOR $270.00 filed January 6, 1982

2. Appearances:

   (a) Steffen W. Graae, Esquire
   Attorney for Plaintiff

   (b) Allen M. Hutter, Esquire
   Plaintiff

   (c) Dr. Brahma S. Kaushiva, pro se
   Defendant

3. Documents produced and reviewed by the Court:

(a) STIPULATIONS filed January 19, 1982 with Proposed Orde

(b) WRIT OF ATTACHMENT issued on August 1, 1980 against defendant.

(c) JUDGE SCOTT'S ORDER OF MARCH 20, 1981 denying the plaintiff's motion seeking an order directing garnishee to deposit the writ amount in the Registry of the Court since the plaintiff will have recourse against the garnishee who will have sufficient funds to respond to its obligation under the writ of attachment against the defendant.

(d) MOTION FOR RECONSIDERATION OF THE ORDER OF DECEMBER 21, 1981 RE: New Trial with Proposed Order and RE: Stay of Execution of Judgment of November 23, 1981 with Proposed Order.

(e) UDC CALCULATION OF INTEREST ON BACK PAY AND MONIES WITHHELD BY UDC DUE TO THE WRIT OF ATTACHMENT dated January 11, 1982.

(f) SUPERSEDEAS UNDERTAKING ON APPEAL BOND FOR $22,422.48 IN THE AMOUNT OF JUDGMENT FURNISHED BY THE DEFENDANT.

(g) DOCUMENTARY EVIDENCE SHOWING THE TEMPERING OF OFFICIAL COURT RECORD AND MISSING DOCUMENTS AT THE TIME OF THE TRIAL AND AFTER THE TRIAL, SO MUCH SO, THAT NOW THE ENTIRE JACKET IS REPORTED AS MISSING. (cf: Letter of February 23, 1981 addressed to Honorable Judge Stewart pointing out the delays and missing jacket leaving the court record in incomplete form. Attachment IV to the Supplement to Defendant's Motion for New Trial, and/or Amendment, & Relief from Judgment)

(h) JACKET ENTRY "DEFT'S MOTION TO QUASH ATTACHMENT BEFORE JUDGMENT IS DENIED. Sd.J Stewart August 14, 1980"

4. Plaintiff's Position:

(a) Not prepared to sign stipulations despite Pl's Response of January 6, 1982 and previous agreement.
(b) Not prepared to withdraw writ of attachment despite the nonexistence of a Bond, which has been allegedly taken from the jacket by the plaintiff and returned to the bonding company without authority.
(c) Willing to stay of execution of judgment only on posting of supersedeas bond in the full amount plus interest plus costs for $26,000.00.

5. Defendant's Position:

(a) Supersedeas Bond is not necessary as the opposite party is already protected under Judge Scott's Order of March 20, 1981.

(b) In case a supersedeas bond is necessary it should be in the exact amount of the judgment $22,422.48 minus the amount of $10,198.99 being held by the University illegally due to the writ of attachment or in the alternative release the sum of $10,198.99 to the defendant.

(c) Vacate the Writ of Attachment issued on August 1, 1980 and Vacate the Court Order of August 12/14, 1980 issued by Judge Stewart denying the motion to quash the writ.

(d) Other Requests

i. Correction of Transcript of November 23, 1981.
ii. Inquiry into the disappearance of official Court Jacket.
iii. Inquiry into the sloppy maintenance of court record at the time of the Trial and afterwards.
iv. Inquiry into the removal of the Writ Bond.
v. Return of the Plaintiff's Exhibits and Defendant's Exhibits to the Court Clerk for perfecting the Appeal.

6. Court Order:

The Court is not inclined to pursue the Stipulations as they are not signed by all the parties and will not consider the Motion for a New Trial and Reconsideration as the matter is on appeal. As to the other requests of the Defendant, the Court is not interested and these should be pursued separately.

The Court would sign a Supersedeas Bond set for $25,000.00 and stay the execution of judgment of November 23, 1981 which the Defendant should prepare for signatures of the Court and send a copy of the Proposed Order to the Plaintiff concurrently.

Respectfully submitted,

Brahma S. Kaushiva

DR. BRAHMA S. KAUSHIVA pro se
4623 Lincoln Avenue
Beltsville, Maryland 20705
Phone Number (301)937-2408

Read &
Read &
Approved.

Date January, 1982

JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of January, 1982, a copy of the foregoing Minutes and Proposed Order for the Stay of Execution of Judgment of November 23, 1981 were mailed, postage prepaid, to Steffen Graae, Esquire, P.C. 918 16th Street, N.W., Washington, D.C. 20006; Joseph T. Lilly, Esquire, 5707 East West Highway, Riverdale, Maryland 20737; and William J. Earl, Esquire, Assistant Corporation Counsel, D.C., Room 309, District Building, 14th & E Streets, N.W., Washington, D.C. 20004.

Brahma S. Kaushiva

DR. BRAHMA S. KAUSHIVA pro se

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

ALLEN M. HUTTER
Plaintiff

v.

BRAHMA S. KAUSHIVA
Defendant

Civil Action Number 10617-80

O R D E R

Upon consideration of the motion of the defendant for stay of execution of judgment dated November 25, 1981 under Superior Court Rule 62, it by the Court this ____day of January, 1982

ORDERED, that the motion for stay of execution of judgment be and hereby is granted and the relief sought therein shall be herein ordered per hearing held on January 22, 1982.

FURTHER ORDERED, that Defendant will post a supersedeas bond in the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) as security for the adverse party.

JUDGE WILLIAM E. STEWART, JR.

cc: Steffen Graae, Esquire
918 - 16th D DStreet, N.W.,
Washington, D.C. 20006

Joseph T. Lilly, Esquire
5707 East West Highway
Riverdale, Maryland 20737

William J. Earl, Esquire
Assistant Corporation Counsel, D.C.
319 District Building
14th & E Streets, N.W.,
Washington, D.C. 20004

Dr. Brahma S. Kaushiva
4623 Lincoln Avenue
Beltsville, Maryland 20705

DR. BRAHMA S. KAUSHIVA

July 8, 1982

JUL 9 1982

Chief Deputy Clerk
Civil Division

Clerk of the Superior Court
of the District of Columbia
500 Indiana Ave., N.W.
Washington, D.C.

Re: Hutter v. Kaushiva CA 106[illegible]

Dear Sir:

I am writing to you in regard to several improprieties I have witnessed in the course of the litigation I have been embroiled in, both at the trial work level and on appeal.

I am concerned about the fact that documents are missing from the official court record of the trial, and were out of the court system at crucial times relative to court rulings. Further, three plaintiff's exhibits were taken out at the trial court record by opposing counsel, without my knowledge, and the ones which have been furnished for the appeal record are not the exhibits originally marked during the trial.

In addition, a bond that was furnished after the grant of a writ of attachment has been removed from the jacket, and I would like to know if it is still in existence, who removed it and when it was removed.

On June 29, 1982 the appeal was dismissed based on a joint stipulation by Mr. Graae and Mr. Earl, despite the fact that Chief Judge Newman had previously ordered a consolidation of [illegible] Chief Judge Newman had previously ordered a consolidation of appeals. No notice was furnished to me of this dismissal.

I would appreciate your investigation into these matters. Please send me any information you uncover as to an explanation of these events, and who has been responsible.

Thank you for your assistance.

Sincerely,

Brahma S. Kaushiva July 8, 1982

Brahma S. Kaushiva
4623 Lincoln Avenue
Beltsville, Maryland 20705

DR. BRAHMA S. KAUSHIVA

July 8, 1982 RECD. JUL

Clerk of the District of
Columbia Court of Appeals
500 Indiana Ave., N.W.
Washington, D.C.

Re: Hutter v. Kaushiva
81-1624

Dear Sir:

I am writing to you in regard to several improprieties I have witnessed in the course of the litigation I have been embroiled in, both at the trial work level and on appeal.

I am concerned about the fact that documents are missing from the official court record of the trial, and were out of the court system at crucial times relative to court rulings. Further, three plaintiff's exhibits were taken out at the trial court record by opposing counsel, without my knowledge, and the ones which have been furnished for the appeal record are not the exhibits originally marked during the trial.

In addition, a bond that was furnished after the grant of a writ of attachment has been removed from the jacket, and I would like to know if it is still in existence, who removed it and when it was removed.

On June 29, 1982 the appeal was dismissed based on a joint stipulation by Mr. Graae and Mr. Earl, despite the fact that Chief Judge Newman had previously ordered a consolidation of appeals. No notice was furnished to me of this dismissal.

I would appreciate your investigation into these matters. Please send me any information you uncover as to an explanation of these events, and who has been responsible.

Thank you for your assistance.

Sincerely,

Brahma S. Kaushiva July 8, 1982
4623 Lincoln Avenue
Beltsville, Maryland 20705

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

DR. BHARAT S. KAUSHIVA :

Plaintiff :

v. : C.A. 5792-77

LOCAL 2142, et al :

Defendants :

ORDER

This matter is before the Court upon the motion of Joseph T. Lilly, counsel for the plaintiff in the above-captioned case, for leave to withdraw as plaintiff's counsel. After having received notice of the plaintiff's consent to this withdrawal and having received notice that counsel for the defendants have no opposition to the withdrawal, the Court will allow counsel for the plaintiff to withdraw.

In reaching this decision and considering the complexity of this case to date, the Court urges the plaintiff to arrange for other counsel to represent him in any further actions filed in this matter in this Court. In the meantime, the Court notes that the plaintiff may appear pro se.

Therefore, it is by the Court this 6th day of September, 1979

ORDERED that the motion of Joseph T. Lilly, counsel for the plaintiff, for leave to withdraw be, and the same hereby is, granted.

Judge George Herbert Goodrich

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ALLEN M. HUTTER, et al.,

Plaintiffs,

v. : Civil Action No. 10617-80

DR. BRAHMA S. KAUSHIVA, : Civil Action No. 14539-80

Defendant.

FILED

MAY 20 1981

Superior Court of the District of Columbia

ORDER

Upon consideration of defendant's motion to compel answers to the interrogatories and production of documents, and the matters asserted in support thereof, and there being no opposition thereto it appearing that Civil Action No. 14539-80 wherein Joseph Lilly was the plaintiff, has been dismissed, it is this 20th day of May, 1981,

ORDERED, That Plaintiff Allen M. Hutter produce the documents requested by defendant in the first set of interrogatories served on December 31, 1980 and January 5, 1981, on or before the 12th day of June, 1981, failing which Civil Action No. 10617-80 may be dismissed upon the defendant's application in open court. Reasonable notice of said application is to be given. It is

FURTHER ORDERED, That the plaintiff, Allen M. Hutter, pay the defendant $50.00 for costs and attorney's fees incurred in preparing his motion and memorandum to compel answers and production of documents. It is further

ORDERED, That the defendant's motion as it applies to the plaintiff, Joseph Lilly, in Civil Action No. 14532-81, is denied as moot.

JUDGE
Bruce S. Mencher

Copies mailed to: MAY 22 1981

Joseph T. Lilly, Esq.
5707 East West Highway
Riverdale, MD 20840

Steffon W. Greer, Esq.
918 - 16th Street, N.W.
Washington, DC 20006

Dr. Brahma S. Kaushiva
2523 Lincoln Avenue
Beltsville, MD 20705

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

Xa

FILED
IN CIVIL CLERK'S OFFICE
JUN 16 1981
Superior Court of the District of Columbia Washington, D.C.

ALLEN M. HUTTER,)
PLAINTIFF)
v.) CA No. 10617-80
BRAHMA KAUSHIVA,)
DEFENDANT)

ORDER

Upon consideration of Plaintiff's Motion to Reconsider Order and it appearing that Plaintiff had previously ~~complied in full with~~ Answered Defendant's interrogatories and requests for documents, it is this 16th day of January, 1981

ORDERED, that that part of the Court's May 20, 1981 Order for Plaintiff to produce documents ~~and pay Defendant [illegible] in full~~ is hereby vacated. Plaintiff shall pay $50.00 Costs remaining.

Judge

Steffen Graae
918 16th Street, N.W.
Washington, D.C. 20006

Brahma S. Kaushiva
4623 Lincoln Avenue
Beltsville, Md. 20705

William S. Aramony
Kator & Scott
1029 Vermont Ave., N.W.
Washington, D.C. 20005

University of the District of Columbia

VAN NESS CAMPUS
4200 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20008

OFFICE OF THE VICE PRESIDENT FOR FINANCE

January 11, 1982

NAME : Dr. Brahma S. Kaushiva

SUBJECT: Calculation of Interest on Back Pay

Gross Back Pay	$144,441.86
Less Normal Benefit Deductions Made by D.C. Payroll	44,118.31*
Net Disposable Income	$100,323.55
Payment to Dr. Kaushiva 10/15/80	$ 96,060.62
Balance Due	$ 4,262.93
Add Accrued Interest @ 4%:	
4% X (7/18/80 to 10/15/80) 89/365 Days @ $100,323.55	$ 978.50
4% X (10/16/80 to 3/31/81) 167/365 Days @ $4,262.93	$ 78.02**
4% X (7/18/80 to 3/31/81) 256/365 Days @ $2,802.48	78.62**
Accrued Interest Due 3/31/81	$ 1,135.14
Adjusted Balance Due Dr. Kaushiva 3/31/81	$ 5,398.07
Payment Due Retirement and Health Insurance Carriers:	
Retirement Premium Due Carrier	$ 975.05
Health Insurance Premium Due Carrier	$ 2,802.48
Balance Due to Restore Full Benefits 3/31/81	$ 3,777.53

NOTE:

*Employee cannot claim interest on standard deductible items which are not payable to employee but accrued to his fringe benefits program.

**The University was prepared on March 31, 1981 to make final payment of $4,262.93 plus accrued interest of $1,135.14. However, the University was served in August 1980, a Court Writ which ordered UDC not to disburse the remaining settlement balance to Dr. Kaushiva. Therefore, the University is not responsible for interest payment after March 31, 1981, in that, the fina payment is being held-up by an court order.

***Dr. Kaushiva stated that he has paid health insurance preminum from person finance. Therefore, he is entitled a refund from the Carrier and interest f the University on personal finance used to substain health insurance in forc

Prepared by: _____
Vice President for Finance

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

Z

DR. BRAHMA S. KAUSHIVA	:	
v.	:	C.A. 5792-77 Civil I
LOCAL 2142, WASHINGTON TECHNICAL INSTITUTE, AMERICAN FEDERATION OF TEACHERS, ET AL	:	Judge Goodrich

ORDER

This matter is before the Court on the plaintiff's motion for confirmation of arbitration award pursuant to Rule 70I of the Civil Rules of the Superior Court and the opposition thereto of the defendants, the Board of Trustees of the University of the District of Columbia. Also, before the Court at this time is the motion of attorneys Joseph T. Lilly and Allan M. Hutter for leave to intervene in the confirmation proceedings and the opposition of both the plaintiff and the defendant to said motion to intervene.

I. PAST PROCEEDINGS IN THIS MATTER

This case concerns the termination of the plaintiff from his teaching position at the Washington Technical Institute, which has since become the University of the District of Columbia. On June 13, 1978 this Court vacated a May 24, 1977 arbitration decision due to the absence of two of the arbitrators from substantial portions of the grievance hearings and ordered the parties to submit the matter to new arbitration proceedings. On July 17, 1979 a stay of the Order was vacated and the June 13, 1978 Order was reinstated.

The new arbitration proceedings before a newly selected arbitration panel commenced with hearings on September 24, 1979. A written decision was rendered by the arbitration panel on March 14, 1980 in which it found that the school's termination of the plaintiff from his teaching position was improper. In its decision, the arbitration panel awarded the plaintiff reinstatment to his former position and back pay and benefits for the period since his termination.

On March 24, 1980, the plaintiff moved this Court to confirm the arbitration award and enter judgment in accordance with said award. The defendants filed an opposition to said motion and a hearing was conducted on April 29, 1980 before this Court. The plaintiff appeared and argued the motion pro se and counsel for the Board of Trustees of the University of the District of Columbia argued in opposition to the motion. Thereafter the matter was taken under advisement.

Several days after the hearing, on May 2, 1980, Joseph T. Lilly and Allan M. Hutter, attorneys formerly retained by the plaintiff, filed a motion to intervene pursuant to Rule 24(a) of the Civil Rules of the Superior Court. Accompanying the motion was a complaint for declaratory relief alleging that the applicants had performed legal services for the plaintiff and that they were entitled to recover a percentage amount of any judgment entered in favor of the plaintiff. In the motion to intervene, the applicants requested that the Court confirm the arbitration award and direct the defendants to pay thirty (30%) percent [i.e., fifteen (15%) percent for each attorney] of the amount of judgment into the Registry of the Court pending a judicial determination of their complaint for declaratory judgment.

Both the plaintiff and the defendants filed oppositions to the granting of the motion to intervene, and the plaintiff filed a motion to dismiss the complaint for declaratory judgment. A hearing was conducted on the motion to intervene on July 1, 1980. Applicants Lilly and Hutter argued in support of the motion, and the plaintiff and counsel for the defendants argued in opposition. Thereafter the matter was taken under advisement, the Court indicating that it would rule on both the motion for confirmation and the motion to intervene at the same time.

II. CONSIDERATION OF THE MOTION TO INTERVENE

The applicants have presented a contingent fee agreement signed by themselves and the plaintiff dated September 20, 1979. They maintain that said agreement establishes an equitable lien against any recovery the plaintiff may obtain. On the basis of this equitable lien, they seek to intervene in the confirmation proceedings pursuant to Rule 24(a). At the hearing, the applicants requested that if the Court determines that they may not intervene as a matter of right, they be permitted to intervene pursuant to Rule 24(b).

The standard for intervention of right requires that the applicants show that their interests are not adequately represented by the existing parties. Thus, in past cases, attorneys have been permitted to intervene where the progress of the cause of action makes it clear that the parties are acting to defeat the attorney's interest by dismissing the cause of action. Friedman v. Harris, 81 U.S. App. D.C. 317, 158 F2d 187 (1946). In this case, however, there is no suggestion of such an occurrence. Thus, as against the defendants, the applicants' interest is wholly and adequately represented by the plaintiff.

The applicants contend that their interests in the equitable lien as against the plaintiff will not be adequately represented if and when he obtains a judgment in his favor.

A review of the law regarding equitable liens for attorney's fees shows that generally an attorney must rely on the personal responsibility of his client for compensation. Lyman v. Campbell, 87 U.S. App. D.C. 44, 182 F2d 700 (1950). This is so even where a fee agreement is based upon a specified percentage of the amount recovered. Taylor v. Wharton, 43 U.S. App. D.C. 104 (1915), cert. denied 238 U.S. 631 (1915).

In DeWinter v. Thomas, 34 U.S. App. D.C. 80 (1909), cert. denied 215 U.S. 609 (1910), it was determined that a contingent fee agreement did not create an equitable lien since it did not expressly, or by necessary implication, appear that the fund itself was looked to for payment. While the law does not specify what language is necessary to show such an intent, it is clear that the agreement must reflect the intent of the parties that the fund recovered is to be security for payment of the fee.

An examination of the fee agreement between these attorneys and the plaintiff shows that there is no language to indicate such an intent. While the agreement recites that each attorney will receive "15% of any amount of damages recovered in connection with the case," such language only establishes the basis on which the fee shall be computed. It is insufficient to show that the fee was intended to be paid directly from the fund itself.

The procedures of the Civil Division provide for the

filing and determination of liens, attachments, and other claims for sums due and owing. The applicants cite judicial economy as the reason why this Court should permit them to intervene in these proceedings to establish their claim. However, the Court must also consider the delay or prejudice to the plaintiff that would result from such intervention. To require that 30% of any recovery be paid into the Registry of the Court prior to a determination of the validity of that or any other percentage as a lien, would unfairly delay the resolution of this matter for the plaintiff.

While other proceedings may indeed result in a finding that an equitable lien arises out of this agreement, its existence has yet to be sufficiently established to justify or permit the applicants' intervention at this time in the confirmation proceedings. Therefore, the motion to intervene will be denied.

III. CONSIDERATION OF CONFIRMATION OF THE ARBITRATION AWARD

The plaintiff has requested that the Court confirm the award rendered by the arbitration panel on March 14, 1980 and enter that award as the judgment of this Court. The defendants do not contest that part of the award directing the reinstatement of the plaintiff to his former position. However, they oppose the entry of judgment on the award of back pay and benefits on two grounds:

(1) That the arbitration panel acted outside of its authority in the calculation of the amount of back pay and benefits found owing to the plaintiff, and

(2) That the arbitration panel made the award improperly

in that the calculation was prepared by the plaintiff and the panel abdicated its responsibility to determine the validity of the amount included in the calcuation.

Under Rule 70I, the judicial review of arbitration awards is limited. The award may properly be entered as a court judgment as long as it was made within the arbitration panel's authority to determine the issue. See Marceron v. Chevy Chase Services, Inc., 103 U.S. App. D.C. 303, 258 F2d 155 (1958). In this jurisdiction, there are two tests that may be used to determine the scope of an arbitration panel's authority: the "agreement only" test or the "agreement and submission" test. Sindler v. Batleman, D.C. App. Nos. 79-75 and 79-135 June 3, 1980, Daily Wash. Law Reporter, vol. 108 at 1249, July 3, 1980.

Under the circumstances of this case, the Court must look not only to the collective bargaining agreement but also to the Court's order of June 13, 1978 which directed the parties to employ the arbitration procedure to determine what was properly within the arbitration panel's authority. In so doing, the Court finds that the panel was empowered to proceed in accordance with the submission proposed by the plaintiff which was attached to and made part of the order. That submission clearly indicates the issues that were to be addressed by the arbitration panel and therefore that were within their authority to resolve.

At the court hearing on April 29, 1980, counsel for the defendants indicated that the University did not contest the award of back salary and the incremental grade increases for the academic years 1975-76, 1976-77, 1977-78, 1978-79 and 1979-80 as indicated by the arbitration award. However, the defendants

maintained their opposition to two elements of the award as beyond the arbitration panel's authority: (1) the amount awarded as salary for summer employment, and (2) the interest awarded for each year's salary found to be owing.

An examination of these two elements against the order of June 13, 1978 shows that the award of salary for summer employment was clearly an issue submitted for determination by the arbitration panel and therefore within their authority to award. The award of interest, however, is nowhere indicated in the order of June 13, 1978 and therefore such award of interest will be vacated as outside of the panel's authority and will not be entered as judgment of this Court.

The defendants have also challenged the monetary award of the arbitration panel on the grounds that the panel merely attached to its award the calculation prepared by the plaintiff and thus abdicated its responsibility. The plaintiff acknowledged that he prepared the statement. He contends that it was presented as an exhibit at the arbitration hearings during the presentation of his case. He maintains that the defendants had the opportunity to challenge the document at the time of the hearings and failed to do so. He further maintains that the defendants had the opportunity to cross examine him regarding the accuracy of the statement and the validity of the amounts presented and failed to do so.

The Court finds that the burden in this regard is upon the defendants to show that the inclusion of the calculation by the arbitration panel was improper and an abuse of their decision-making authority. The defendants have only presented their allegation and have failed to sustain the proof required

to support it. Therefore the Court determines that the calculation of the back pay award was properly included in the decision of the arbitration panel.

Therefore, based on the foregoing, it is this 18th day of July, 1980

ORDERED that the motion of attorneys Lilly and Hutter for leave to intervene be, and hereby is, denied; and it is

FURTHER ORDERED that the plaintiff's motion for confirmation of the arbitration award be, and hereby is, granted as follows:

(1) the Board of Trustees of the University of the District of Columbia shall reinstate the plaintiff to his former position with all pay, allowances, benefits, seniority, status and rights that he would have received had the improper termination not occurred;

(2) the Board of Trustees of the University of the District of Columbia shall pay to the plaintiff yearly and summer salary with incremental grade increases in the following amounts: 1975-76 = $4,482.50; 1976-77 = $27,683.26; 1977-78 = $33,393.20; 1978-79 = $37,752.90; 1979-80 = $41.130.00 for a total of $144,441.86 less normal payroll deductions and the amounts earned by the plaintiff in other employment during this period and interest shall accrue at the rate of six (6%) percent on this amount from the date of this judgment;

(3) the plaintiff shall repay to the District of Columbi Department of Labor $5,421.00 and any aditional amounts received

s unemployment compensation during the pendency of this atter;

(4) the Board of Trustees of the University of the istrict of Columbia shall pay the following amounts to the ccount of the plaintiff for retirement benefits: 1976-77 = 3,636.75; 1977-78 = $4,239.75; 1978-79 = $4,641.75; 1979-80 = 5,141.25 for a total of $17,659.50; and for health benefits: 976-77 = $680.64; 1977-78 = $680.64; 1978-79 = $720.60; 979-80 = $720.60 for a total of $2,802.48; and

(5) payment to the plaintiff or his accounts, espectively, of the above amounts, shall be made by the efendants within thirty (30) days from the date of this Order.

George Herbert Goodrich

Judge George Herbert Goodrich

C: Dr. Brahma S. Kaushiva
William J. Earl, Esquire
Joseph T. Lilly, Esquire
Allan M. Hutter, Esquire

uly 18, 1980